

Members

Rep. Sheila Klinker, Chairperson  
Rep. Robert Alderman  
Sen. Marvin Riegsecker  
Sen. Rose Ann Antich  
Sylvia Marie Brantley  
Christopher Durcholz  
Suda Hopkins  
Sally Lowery  
Ervin Picha  
Joanne Rains  
Thomas Van Meter  
Betty Williams



# INDIANA COMMISSION ON MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

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## MEETING MINUTES<sup>1</sup>

Meeting Date: October 3, 2000  
Meeting Time: 11:00 A.M.  
Meeting Place: State House, 200 W. Washington  
St., Room 233  
Meeting City: Indianapolis, Indiana  
Meeting Number: 3

**Members Present:** Rep. Sheila Klinker, Chairperson; Rep. Robert Alderman; Sen. Marvin Riegsecker; Sen. Rose Ann Antich; Sylvia Marie Brantley; Suda Hopkins; Sally Lowery; Ervin Picha.

**Members Absent:** Christopher Durcholz; Joanne Rains; Thomas Van Meter; Betty Williams.

### Call to Order

Representative Klinker called the meeting to order at approximately 11:20 A.M.

### Study of Offenders with Developmental Disabilities

Kathy Lisby, Director, Planning Division, Department of Correction (DOC) and Susan Preble, Legislative Liaison, Family and Social Services Administration (FSSA), presented the Commission with a document entitled "Report of Findings and Recommendations by Indiana Department of Correction and Indiana Family and Social Services Administration." (Exhibit A.) Ms. Lisby explained that the report was the result of a study conducted by DOC and FSSA, as mandated by P.L. 74-2000 (SEA 175-2000). Ms. Lisby highlighted several topics that are discussed in more detail in the report including the procedure and

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

tests used by DOC to identify inmates with developmental disabilities. Ms. Lisby told the Commission that 20 (14 female and six male) out of slightly less than 6,000 individuals who were processed through the DOC intake procedure were identified as having developmental disabilities. Many male inmates refused to take the tests necessary to determine if a disability existed. Ms. Lisby stated that the most significant difference between the individuals identified as having developmental disabilities and similar individuals without disabilities was that the individuals without disabilities had received more treatment for drug abuse problems before entering the DOC system than had those with disabilities. She also noted that most of the individuals who were identified as having developmental disabilities would be considered high functioning, as the average score was a seven or eight (on a scale where ten equals "normal" and eight equals "deficient.")

Ms. Preble told the Commission that based on this DOC/FSSA study, both agencies recommend conducting a more comprehensive study which should include at least the following:

- Basic information regarding:
  - The number of offenders, both adult and juvenile, with developmental disabilities in the criminal justice system (including local jails, detention centers, correctional facilities, community corrections programs, probation, and parole).
  - The nature of offenders' developmental disabilities.
  - The methods currently used to identify offenders with developmental disabilities.
  - The methods most appropriate for identifying offenders with developmental disabilities.
  - A comparison of the length of time actually served by individuals with developmental disabilities and individuals without disabilities who are incarcerated for similar offenses.
- Sufficient funding.
- A determination of what services developmentally disabled offenders receive before becoming involved in the criminal justice system and what services are available for those offenders upon their release.
- A study of how the criminal justice system processes individuals with developmental disabilities.

Ms. Preble stated that the information gathered from this broader study would be essential for deciding if Indiana should develop a program similar to the New Jersey Offenders Program and, if so, how to develop such a program.

In response to questions from Representative Klinker, Ms. Lisby informed the Commission that the study did not include inmates who were already in the system due to time and budget constraints, as well as the fact that SEA 175-2000 specified that testing should be done at the time of intake. Ms. Lisby also stated that if voluntary testing of all inmates were to be implemented, inmates could refuse to participate in the testing, but that information gathered from other sources (e.g., behavioral clinicians, psychologists, and staff members) would be helpful in determining the number of persons with developmental disabilities in the system. Robert Ohlemiller, Deputy Commissioner, Programs and Community Services, DOC, added that educators would also be a good source for finding out which inmates are receiving special instruction or having problems. Mr. Ohlemiller pointed out that some states do require testing of all inmates and that some inmates who refuse to participate in voluntary testing at intake will take the tests at a later time. Representative Klinker expressed the opinion that more inmates might be willing to take the tests if there were some sort of reward for doing so instead of a punishment for refusing the tests.

Responding to questions from Representative Klinker, Ms. Preble stated that at this time, an estimate on the cost of the suggested comprehensive study is unknown. She pointed out that there is no information from New Jersey on this issue, as New Jersey

implemented its offender program without having first done a study similar to the one suggested by FSSA and DOC. Ms. Lisby added that DOC and FSSA might be able to get a rough estimate of the cost by talking with some educational institutions.

Responding to questions from Senator Riegsecker, John Dickerson, Executive Director, The ARC of Indiana, stated that national data estimates that three to ten percent of the prison population is developmentally disabled, compared to the percentage of individuals identified in the FSSA/DOC study (20/6000 or 0.3%). Mr. Dickerson stated that good national data on this issue is sparse and that a comprehensive study such as that suggested by FSSA and DOC would be a very good starting point.

Representative Alderman commented that there needs to be a change in how the criminal justice system deals with individuals who are developmentally disabled or mentally ill, including alternative placement facilities. He stressed that this change needs to occur on both a state and a national level and that Indiana has an opportunity to take a leadership role in the humane treatment of inmates, especially those who need extra assistance.

### First Steps

Senator Connie Lawson informed the Commission that she is currently working with FSSA and various other interested parties on the following four pieces of legislation: 1) annual review of First Steps by MRDD; 2) accreditation of vocational rehabilitation (for adults) providers; 3) cost sharing for First Steps; and 4) accreditation of First Steps providers or independent third party review. Senator Lawson stated that the legislation regarding accreditation and/or review of First Steps providers is still the subject of much discussion, but that any legislation she proposes on this issue will most likely apply to all First Steps providers.

Responding to a question from Senator Riegsecker, Senator Lawson explained that the previous version of the accreditation bill (PD 3193) included an exemption for any First Steps provider who received less than \$15,000 per state fiscal year for providing First Steps services in order to allow an individual to be a service coordinator for a family member. She stated that she has been informed that there are no individuals serving in such a capacity, so the exemption is not necessary.

Responding to questions from Representative Klinker, Senator Lawson stated that although most of the witnesses who testified regarding First Steps at the Commission's meeting on August 25 were from Marion County, there was concern throughout the state regarding accreditation of First Steps providers. Senator Lawson stressed that PD 3193 contained a provision to allow FSSA to work with accrediting organizations other than the specific ones listed. Senator Lawson also stated that although PD 3193 did not contain a grandfathering clause, the two-year delayed effective date should be sufficient to allow providers time to get accredited.

Responding to a question from Representative Alderman, Maureen Greer, Assistant Deputy Director, Child Development, Division of Family and Children, FSSA, stated that there are currently six individuals who staff the division's complaint system for First Steps.

Commission member Erv Picha stated that the First Steps system itself needs to be good, but so does each provider. He stated that accreditation would be a good start and that the two-year delayed effective date is an appropriate amount of time to allow providers to get accredited.

### Criminal History Checks

Rose Damron explained to the Commission that she is the parent of a daughter with physical and mental impairments who was sexually assaulted by an individual who had been hired as a driver's education instructor by Memorial Hospital of South Bend. Ms. Damron stated that the hospital continued to employ the individual who assaulted her daughter even after similar allegations involving other clients had been made against him. Ms. Damron urged the Commission to consider drafting legislation that would prohibit a health care provider from employing someone with a history of sexual abuse that had not resulted in a criminal conviction. ("Exhibit B" is a copy of a handout Ms. Damron distributed to the Commission which includes a copy of her testimony, information regarding her daughter's situation, and proposed language for a draft.)

### Recess

The Commission recessed for lunch for approximately one hour.

### Group Homes

Gerald Coleman, Assistant Commissioner, Health Care Regulatory Services, Indiana State Department of Health (ISDH), informed the Commission that the ISDH is responsible for enforcing federal regulations regarding group homes for the developmentally disabled, of which there are currently 538 in Indiana. Mr. Coleman explained that all regulations dealing with these facilities are federal, not state. He explained that group homes are for individuals who need "active treatment" which, by federal regulation, includes training in basic skills such as dressing and bathing. The group home program was not designed to be a permanent placement and individuals who can perform the basic skills with minimal supervision do not qualify for the program. If an individual does not require active treatment, the facility where the individual is residing becomes decertified for receiving Medicaid reimbursement. A facility has an opportunity to appeal an ISDH determination that a resident no longer needs active treatment but the individual does not. (Mr. Coleman provided the Commission with two documents, "Exhibit C" and "Exhibit D," that summarize the federal regulations concerning group homes.)

In response to questions from Senator Riegsecker, Mr. Coleman stated that the federal regulations regarding the group home program were handed down in 1988. Mr. Coleman also explained that when the ISDH determines that a group home resident does not require active treatment, the entire group home is decertified for receiving Medicaid unless the individual is moved out of the facility. However, a group home with more than four beds can decertify a bed and let the individual remain in the home with other payment arrangements. In the past year, only one group home had been decertified and that was voluntary. Mr. Coleman stated that no other state entity had requested ISDH to step up enforcement of the active treatment regulations in order to reduce the number of individuals being served in group homes. At the request of Senator Riegsecker, Mr. Coleman agreed to provide the Commission with the following information: 1) trends in decertification, both in number of homes and individuals; and 2) written instructions from the federal Health Care Financing Administration (HCFA) regarding ISDH's lack of flexibility in enforcing the federal regulations.

In response to a question from Representative Alderman, Mr. Coleman explained that the determination of whether an individual requires active treatment is made by ISDH surveyors, not the group home staff. Senator Antich expressed concern that this determination is made by someone who observes the individual for only a few hours over a couple of days instead of someone who has daily contact with the individual. Mr. Coleman

stated that the determination is made on the basis of objective criteria specified in the federal regulations. Sue Hornstein, Director, Long Term Care, ISDH, explained that the ISDH staff who make the active treatment determinations must be qualified mental retardation professionals (QMRPs), which means that they have at least a bachelor's degree and some experience working with mentally retarded individuals.

Responding to a question from Commission member Sally Lowery, Mr. Coleman stated that once a determination is made that an individual does not need active treatment, the facility has approximately 90 days to remove the individual before being decertified to receive Medicaid. This time frame, which could possibly be extended a few days if the facility appeals the ISDH's determination, is established by federal regulation. Mr. Coleman explained that the philosophy is that the group home should have already identified the individual as no longer needing active treatment and should be working on a plan to move the individual to another, appropriate placement.

Commission members expressed concern that money that was appropriated to reduce the lists of people waiting for services is being used to provide services to individuals who are being forced to move out of group homes and that these group home spaces are remaining empty instead of being filled by individuals coming out of state developmental centers. Representative Klinker stated that there seems to be a public relations problem in that the residents of group homes and their families do not understand that group home placement is not intended to be permanent. She also recommended that ISDH and FSSA figure out a way to better coordinate the decision that someone is no longer eligible for group home placement, finding an alternate placement for that individual, and finding another individual to take the empty group home slot. Senator Riegsecker stated that he would like to see FSSA search to find an individual in an institutional placement to take a group home placement when an individual in the group home is moved to a more independent setting.

John Dickerson informed the Commission that Mr. Coleman has been very accessible to the families of group home residents who are concerned about the relocation of their family member. He stated that the number of individuals who are being found not to need active treatment is proof that group homes are doing a good job of helping residents gain the skills to live more independently. Mr. Dickerson suggested that the ISDH and FSSA try to convince HCFA to give ISDH some flexibility in enforcing the regulations. Mr. Dickerson also stated that there are currently 1,500 group home residents on the waiting list for waiver slots, indicating a desire to move out of a group home into a more independent setting. It currently costs an average of \$60,000 in state funds to provide services to an individual who is moved out of a group home but is not being served on a Medicaid waiver. To date, FSSA has been able to pool resources from various sources to be sure that no one who is moved out of a group home is denied services, but this may not be able to continue as the number of individuals grows. Mr. Dickerson reminded the Commission that if these individuals were being served through a Medicaid waiver, almost 70% of the costs of serving those individuals would be reimbursed by the federal government. Mr. Dickerson endorsed Senator Riegsecker's idea of having one individual be responsible for overseeing the transition of group home residents to alternate placements, similar to the oversight of individuals who were relocated when New Castle and Northern Indiana State Developmental Centers were closed. (Mr. Dickerson gave the Commission members a handout, "Exhibit E," presenting information regarding the number of persons served through the 317 plan.)

Mr. Tracy Mitchell, Bradley and Associates, informed the Commission that FSSA is currently rewriting the ICF/MR waiver and is working on addressing transition issues. Susan Preble told the Commission that FSSA Secretary Katie Humphreys and Division of

Disability, Aging, and Rehabilitative Services (DDARS) Director Dan Mohnke are meeting later in the week with Sue Hornstein of ISDH regarding the group home issue.

### Possible Legislation

Staff attorney Carrie Cloud explained the following pieces of proposed legislation:

- PD 3339. Emergency services for dually diagnosed persons. Requires FSSA to establish an emergency response program to assist individuals with both developmental disabilities and mental illness in crisis situations. Allows FSSA to contract with a public or private agency to establish the program. Appropriates \$1,000,000 to FSSA from July 1, 2001, to June 30, 2003, to implement the program.
- PD 3342. Volunteer advocates program. Requires FSSA to choose nine counties to develop a pilot program to recruit and train volunteers to serve as advocates for individuals with developmental disabilities who are involved in or at risk of becoming involved in the Indiana criminal justice system as suspects or defendants. Requires FSSA to contract with a private individual or organization to provide training to the counties chosen to participate. Appropriates \$650,000 beginning July 1, 2001, and ending June 30, 2002, and \$650,000 beginning July 1, 2002, and ending June 30, 2003, to implement the program.

Representative Klinker accepted a motion and second to approve PD 3339 as drafted but held the bill for a vote due to the lack of a quorum.

Representative Alderman suggested as an alternative to PD 3342 that the duties listed in the PD be assigned to the current adult protective services (APS) system along with an increased appropriation for APS units. John Dickerson stated that APS units serve more of an investigatory role after a complaint has been filed and that the advocates in a program developed under PD 3342 would serve more of a preventative role. Mr. Dickerson suggested expanding the categories of disabled individuals served by a volunteer advocate program to include individuals who are not involved in or at risk of becoming involved in the criminal justice system but who are otherwise endangered and are without a parent or guardian. The Commission directed staff to revise the draft to include this group of individuals.

### Wage Parity

Mr. Dickerson informed the Commission that the ARC would have proposed language for the Commission's final meeting regarding an appropriation to continue implementation of the 317 Plan and that this language will include an appropriation to address increasing the wages of individuals who provide direct care at state developmental centers and in home and community based settings. Mr. Dickerson acknowledged that pay rates for these positions have been raised, but they are still below other jobs in the area that are less demanding physically and emotionally.

Mr. Tracy Mitchell gave the Commission a handout ("Exhibit H") that compares the hourly wages and benefits of direct care staff in a variety of social service settings. Mr. Mitchell noted that the hourly rate (not including benefits) for a psych attendant at a state developmental center is \$9.13, compared to \$7.04 for an individual who provides day services and \$6.95 for an individual who provides personal assistance services under the Medicaid waiver. Mr. Mitchell stated that state developmental centers and other providers are currently losing existing staff and will not have enough staff to serve individuals who come off the waiting list. He expressed his opinion that limited resources should be directed at hiring and retaining staff instead of accrediting providers. To illustrate the scope of the wage problem, Mr. Mitchell related a situation where a disabled individual made a

higher hourly wage at his own job than was paid to the individuals who provided services to him.

John Dickerson noted that unlike wages for staff at state developmental centers and group homes, the wages for day services and waiver personal assistant staff are not subject to annual review and adjustment. He also stated that some individuals who have waiver slots cannot get services delivered because of the low wages.

#### Next Meeting and Adjournment

Representative Klinker announced that the Commission's final meeting of the interim will be Monday October 30, 2000, at 1:00 P.M. in Room 404 of the State House. (Please note that indications of meeting dates, times, and locations in these minutes are subject to change. Consult the most recent Calendar of Meetings from the Legislative Information Center for official meeting information.)

There being no further business to come before the Commission, Representative Klinker adjourned the meeting at approximately 3:05 P.M.